

Global IRW Newsbrief

Information reporting and withholding (IRW)

14 February 2014

OECD developed Common Reporting Standard documents published

The Organisation of Economic Cooperation and Development (OECD) yesterday released the Common Reporting Standard (CRS), which seeks to establish automatic exchange of tax information as the new global standard for Governments.

As with the Foreign Account Tax Compliance Act (FATCA), the CRS model imposes obligations on Financial Institutions to review and collect information so as to identify where account holders pay tax and then to provide this to their local tax administration.

A total of 42 countries have committed to adopting the CRS and the expectation is that at least some of these agreements will be entered into this year. The documents released are:

1. An introduction and overview on automatic exchange of information.
2. Text of the model Competent Authority Agreement (CAA) and Common Reporting Standard Due Diligence processes.

Whilst the documents released yesterday do not include any specific timelines, we understand that Financial Institutions in countries which adopt the standard will be required to undertake the necessary due diligence obligations in 2016 with reporting starting in 2017.

The CAA is arranged in 7 sections. Section 1 deals with definitions but is less comprehensive than Article 1 of the Model 1 IGA as some of the definitions have been moved to form part of the Common Reporting Standard section.

Section 2 covers the type of information to be exchanged and this follows the Model 1 IGA with the addition that the tax residencies of the account holder are also required.

Section 3 deals with the time and manner of exchange of the information. Competent Authorities are required to exchange the information by September of the year following the year to which the information relates. This is the same as is required under the Model 1 IGA.

Section 4 requires the Competent Authorities to notify each other in the event of incorrect or incomplete reporting or non-compliance by a Financial Institution. Each Competent Authority is responsible for addressing errors or non-compliance through its domestic laws.

Section 5 contains the confidentiality and data safeguards that need to be adhered to by the Competent Authorities. As noted in the overview to the documents, a jurisdiction must have the administrative capacity and process to ensure confidentiality of data received before entering into an agreement and processes. This may mean the certain jurisdictions will be unable to enter into a CRS agreement until they meet these requirements.

Sections 6 and 7 allow for consultations between the competent authorities, amendments to the agreement and the terms of the agreement, including suspension in the event of significant non-compliance and termination of an agreement with 12 months' notice.

The CRS annex is similar to Annex 1 of the Model 1 IGA and deals with due diligence processes to be followed. As with the Model 1 IGA, the document sets out the processes for pre-existing individual and entity accounts and for new individual and entity accounts. This section also deals with various definitions that were not included within the CAA.

The following main points have been identified as areas of difference from the Model 1 IGA.

- The CRS expands the definition of Passive NFE which will require the identification of controlling persons of Investment Entities that are not within a Participating Jurisdiction.

***PwC Observation:** This represents a major change from FATCA and may create confusion as it appears to treat entities that are within the definition of a Financial Institution as Passive NFE's. Guidance on how this is to be interpreted is required urgently.*

- Removal of the “regularly traded on an established securities market” rule that exempted certain debt and equity interests of Investment Entities and other Financial Institutions from being treated as Financial Accounts.

***PwC Observation:** This potentially could have a large impact on Investment Entities, requiring many more to report on their equity and debt interests than is currently required under FATCA.*

- Cash Value Insurance contracts are contracts that have any cash value and are not limited to those with a cash value in excess of \$50,000, as they were in the Model 1 IGA.

PwC Observation: *This will mean many more accounts of this type will now need to be reviewed and identified and will create challenges for those organisations which are near to implementing their FATCA solutions.*

- Documentary evidence is defined as under the Model 1 IGA but omits documents that are included in attachments to Qualified Intermediary agreements.

PwC Observation: *This omission should have a limited impact as most of the documents that are included in these attachments are permitted under the other categories of documents that are acceptable.*

- The thresholds for Pre-existing Individual accounts that applied under FATCA have been removed, other than the threshold for when such an account is considered to be high value.

PwC Observation: *Organisations that have chosen to rely on thresholds for FATCA will need to reassess that decision in the light of this development.*

- Pre-existing Lower Value Account due diligence includes the option of relying on a residence address based on documentary evidence to determine an account holder's status as an alternative to an electronic search for indicia.

PwC Observation: *The ability to use this option will depend on how the documentary evidence requirement is intended to work; it may not be as useful as it first appears.*

- The indicia have been modified to reflect the fact that the CRS will focus on tax residency but bring in additional requirements in relation to accounts where there is a "hold mail" instruction or "in care of address" that is the sole address and no other indicia are associated with the account.

PwC Observation: *Whilst the changes are understandable, the fact that they are different to FATCA presents implementation issues in respect of due diligence processes organisations have developed.*

- Pre-existing Entity account thresholds do not include the higher threshold of \$1m and so the monitoring of account balances around \$250,000 becomes necessary if thresholds are applied.

PwC Observation: *As with FATCA whether to apply the threshold or not is a decision that can be made in relation to all accounts or a clearly identifiable separate group.*

- For accounts that have been closed there is no requirement to report the balance of such an account and only requires reporting of the fact that the account has been closed.

PwC Observation: *Whilst a simplification from FATCA, it suggests organisations will need to implement two different processes to ensure they meet both the CRS and FATCA requirements.*

The details released yesterday will at least allow firms to determine the scope of their obligations under the CRS but still leave many questions to be answered. The OECD is currently developing commentary to accompany the CRS which is expected to be published in June. This will hopefully explain how the CRS is to be implemented and strike a balance between what's workable in practice and minimising the costs of implementation.

A more detailed review of the changes and their impact for those currently implementing FATCA projects will follow.

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